

BEFORE THE COMMISSIONER OF FINANCIAL INSTITUTIONS
STATE OF TENNESSEE

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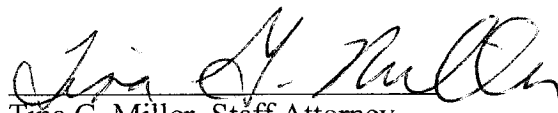
1. The Petitioner is a Department of the State of Tennessee organized pursuant to the provisions of T.C.A. Section 4-3-101 *et seq.*

2. The Commissioner of the Tennessee Department of Financial Institutions is vested with jurisdiction to entertain this proceeding pursuant to the provisions of the Tennessee Banking Act, T.C.A. 45-1-101 *et seq.*

3. On May 3, 2004 the Commissioner issued an Emergency Order to Cease and Desist against Sentinel Trust Company and its Board of Directors ("Sentinel"). The Emergency Order was accompanied by a Notice of Charges. A copy of the Emergency Order and Notice of Charges is attached hereto as Exhibit "1" and is incorporated herein as though fully restated.

4. On June 2, 2004, the Department received a letter from counsel for Sentinel and its Board Answering the Notice of Charges and requesting that they be given every hearing and procedural safeguard to which they are entitled. The Department deems Sentinel's request to be a request for a hearing before an administrative law judge. A copy of the June 2, 2004 letter and the Answer is attached hereto as Exhibit "2". Upon such request, T.C.A. Section 4-5-101 *et seq.*, T.C.A. Section 45-1-107 *et seq.* and Chapter 0180-6 of the Rules of the Department of Financial Institutions require that a hearing be held upon Sentinel's appeal of the Emergency Cease and Desist Order issued by the Commissioner.

Dated this 3rd day of June, 2004.



Tina G. Miller, Staff Attorney

BPR #012644

TN Department of Financial Institutions

Legal Division

511 Union Street

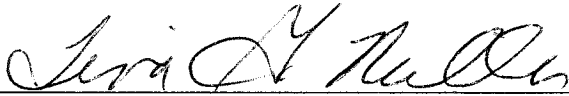
4th Floor, Nashville City Center

Nashville, TN 37219

(615) 532-1030

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Request was served on Sentinel Trust Company and its Board of Directors, by and through its counsel, Carrol D. Kilgore, Branstetter, Kilgore, Stranch & Jennings, 227 Second Ave. N., 4th Floor, Nashville, TN 37201-1631, this 4th day of June, 2004.



BRANSTETTER, KILGORE, STRANCH & JENNINGS

ATTORNEYS AT LAW

227 SECOND AVENUE NORTH

FOURTH FLOOR

NASHVILLE, TENNESSEE 37201-1631

CECIL D. BRANSTETTER, SR.
C. DEWEY BRANSTETTER, JR.
RANDALL C. FERGUSON
R. JAN JENNINGS*
CARROL D. KILGORE
DONALD L. SCHOLLES
JAMES G. STRANCH, III
JANE B. STRANCH

TELEPHONE
(615) 254-8801

FACSIMILE
(615) 255-5419

MARK A. MAYHEW
J. GERARD STRANCH, IV
JOE P. LENISKI, JR.

*ALSO ADMITTED IN GA

June 2, 2004

RECEIVED
JUN 02 2004

DEPARTMENT OF
FINANCIAL INSTITUTIONS

By Hand Delivery

Hon. Kevin P. Lavender
Commissioner
Tennessee Department of
Financial Institutions
511 Union Street, Suite 2100
Nashville, Tennessee 37219-1760

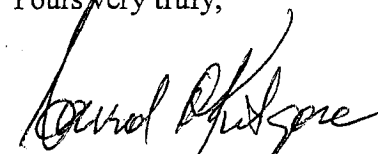
Re: Sentinel Trust Company, et al.

Dear Commissioner Lavender:

Enclosed is the answer to be filed for Sentinel Trust Company to the Notice of Charges issued on May 3, 2004.

I am mailing a complementary copy to Assistant Attorney General Kleinfelter, and hope that some settlement can be worked out to permit this company to continue performing its appointed fiduciary activities.

Yours very truly,


CARROL D. KILGORE

EXHIBIT

2

**BEFORE THE COMMISSIONER OF FINANCIAL INSTITUTIONS
STATE OF TENNESSEE**

IN THE MATTER OF:

SENTINEL TRUST COMPANY

Hohenwald, Tennessee,

AND

Danny N. Bates, Clifton T. Bates, Howard W. Cochran,

Bradley S. Lancaster, and Gary L. O'Brien

Members of the Board of Directors of

Sentinel Trust Company, Howenwald, Tennessee,

Respondents

**RESPONDENTS' SPECIAL APPEARANCE,
STATEMENT OF SPECIAL DEFENSES,
AND ANSWER TO NOTICE OF CHARGES**

The Respondents, above-named, specially appearing in deference to position and authority of the Tennessee Commissioner of Financial Institutions (hereinafter, the Commissioner), but nevertheless appearing to deny that he is authorized by law to take the actions he took in issuing such Notice of Charges delivered to Respondent Sentinel Trust Company's (hereinafter, Respondent Sentinel's) former attorneys on May 3, 2004, and subsequent actions taken by him pursuant to such Notice, and before responding to any charges set out therein, appear specially to deny the Commissioner's power and jurisdiction to take such actions, and not waiving such special appearance and objections, state the following

SPECIAL DEFENSES

1st: The powers claimed by the Commissioner in his said Notice and subsequent instruments

issued by him are based upon orders that can be issued with reference to state banks, including, without attempting to list all of them, the powers to issue orders for the protection of earnings and the interests of depositors of "state banks" under T.C.A. § 45-1-107(a)(5), to remove officers of a "state bank" and impose stated requirements upon a "state bank" under T.C.A. § 45-1-107(b) and (e), to take possession of a "state bank," to assume such bank's powers of management and control, and possibly later conclude to liquidate the same as set out in T.C.A. § 45-2-1502, and the power to subsequently determine, *subject to prior court approval*, to liquidate such a "state bank," and his stated power to appoint a receiver for a "state bank" in T.C.A. § 45-2-1502(b)(2), and power to make orders for the protection or governance of banks under T.C.A. § 45-2-107(a) and (e), is each a power stated to pertain only to state banks, Respondent Company is a State Trust Company, and is not and has never been a state bank, and no statute purports to give the Commissioner the power to exercise such sweeping powers over state trust companies.

2nd: As a Tennessee Trust Company authorized to act as a trust company since its incorporation as a Tennessee Corporation on November 20, 1975, Respondent Company is not and has never been a bank; it has no depositors and has never had a depositor, and is not and has never been insured by the Federal Deposit Insurance Corporation or other such agency; unlike a bank, which holds deposits subject to each account-owner's right to demand and receive withdrawal of his entire "deposit" on any banking day, so as to require that every such bank have "reserves" in a percentage of such withdrawable demand deposits, Respondent Company holds no money whose disbursement obligation is created by any person's demand. Its obligation to disburse is based only upon requirements of bond resolutions and other such indentures pursuant to which bond issuers sell bonds to the public, on which bonds Respondent Company acts as Trustee and/or Paying Agent, and its disbursement duty is to make periodic payments of principal and interest instalments to bondholders. In the performance of its duties, it receives and pays out many millions of dollars each year, and it holds no moneys or securities in its own vaults, but all are deposited in banks, whether cash or securities, so that there is no need for any law and there is no law empowering the Commissioner to take possession of Respondent Company's corporate headquarters, its corporate

powers, its corporate property, or its corporate functions. Such powers as the Commissioner claims and has purported to exercise in issuance of the aforesaid notice and pursuant thereto have not been granted to him by any statute, and he is not vested with any such powers as to a trust company not authorized to engage in the banking business..

3rd: Respondent Company receives and disburses moneys constantly in carrying out its legal obligations as a trustee pursuant to bonds held by the public pursuant to their issuance by hundreds of bond issuers, including many municipalities and other governmental entities, and heretofore has never failed to make any such principal and interest disbursements to the thousands of bondholders served by it except when the bond-issuing entity defaulted in paying over to Respondent Company the debt service payments (hereinafter, "contributions") they were required to make by their bond resolutions or other indentures. In the unfortunate case of default by the bond-issuing debtor, it has been the obligation of Respondent Company to actively and aggressively enforce the bondholders' rights by liquidating the assets of the bonded debtor over sometimes extended periods of time, often by legal proceedings, including bankruptcy proceedings, as to which necessary actions, Respondent Company, under each and every such bond resolution or indenture, has a first lien on all security for the costs of liquidating such assets. Such defaulted bonds are and must be kept in a separate category from valuable bonds not in default. As to bonds not in default, the final contribution necessary to pay an instalment of principal and interest often comes by electronic transfer on or immediately before the date of required issuance of checks by Respondent Company to such bonded debtor's bondholders for principal and interest payments. By the actions of the Commissioner herein, he has actively prevented the performance of these legal obligations owed to the holders of more than 20 bond-issuers, including some Tennessee municipalities, so that the said Commissioner's actions in this matter and in subsequent orders and actions has **caused** defaults to occur on many such bond issues, when but for such actions, such bond obligations would have been timely disbursed by checks issued by Respondent Company on the due date of June 1, 2004.

4th: Although Respondent Company's status as a corporation long authorized to do business as

a trust company is part of the basis of its authority to act as Trustee and Paying Agent, its authority and obligations to receive moneys in trust from bond issuers and to disburse such moneys to bond holders derive from its contractual appointment as Trustee and Paying Agent as set out in the detailed provisions of hundreds of trust resolutions and other such instruments, and the power to remove it from such positions and to appoint a selected entity to act as substitute Trustee and Paying Agent is vested most often in the bond-issuer, not in the Commissioner, and not in the State of Tennessee.

5th: In addition to the Commissioner's lack of statutory authority to accomplish, as hereinbefore alleged, the charging actions, seizures, *de facto* removal of Respondent Company's officers and directors and termination of the employment of its employees, assumption of control of the assets it holds in trust in the possession of banks authorized to hold such assets, and *de facto* seizure and exercise of Respondent Company's powers and duties as Trustee and Paying Agents under all the bond instruments under which it has been so appointed, the Commissioners actions, attempted exercise of jurisdiction under the Administrative Procedure Act, T.C.A. §§ 4-5-101, *et seq.*, his actions in such course of official actions which began with issuance of the said "Notice of Charges and Opportunity for Subsequent Hearing" on May 3, 2004, are arbitrary, unauthorized by law, in excess of the powers vested in him by law, for the following additional reasons, which preclude any pretended "construction" that statutes enunciating empowerment to act in regard to state banks may empower such actions in regard to a trust company which is not a bank:

- i. To the extent that legislation may be contended to empower the Commissioner to take such actions as assuming Respondent Company's contractual obligations and rights to control all trust funds in its bank accounts by virtue of its status as Trustee and Paying Agent, the State of Tennessee (including its statutes and regulations) is constitutionally prohibited from taking such actions by prohibitions against it impairing the obligations of contract, Constitution of Tennessee, Art. I, § 20 and Article XI, § 16, and the Constitution of the United States, Art I, § 10.

- ii. The Commissioner and the State of Tennessee are prohibited from seizing the property of Respondent Company, and the property of thousands of bond-holders and bond issuers which Respondent Company holds in trust, without just compensation, in violation of the Constitution of Tennessee, Art. I, § 8 and Art. XI, § 16, and the Constitution of the United States, Fifth Amendment and Fourteenth Amendment, § 1.
- iii. Apart from consents or waivers that (insofar as Respondents know) may have been required of state banks, as far as trust companies and other corporations and private citizens are concerned, the power to issue orders to specific persons or corporations requiring the obedience of laws, the power to impose receiverships as a means of enforcing laws for the protection of the public and individuals, is and has always been among the judicial powers vested in the Courts of Tennessee, and it is forbidden that any statute vest, or be construed as vesting any part of such judicial power in any member of the Legislative or Executive Departments of the State of Tennessee by the Constitution of Tennessee, Art. II, § 2, which provides: "No person or persons belonging to one of these departments [Legislative, Executive and Judicial, by Art. II, § 1] shall exercise any of the powers belonging to either of the others, *except in cases herein directed or permitted.*" (Italics added). There is no other provision of the Constitution of Tennessee either directing or permitting such judicial powers to be exercised by the Commissioner or by the head of any other Executive Department of the State of Tennessee. Hence the Commissioner's purported subsequent appointment of a receiver is void, and actions by the Commissioner, his appointed "Receiver," and its representatives pursuant thereto, including intrusion into control of the trust funds held by Respondent Company in its bank accounts, are without legal authority.
- iv. To the extent that the Commissioner might otherwise be authorized to conduct

administrative hearings and make administrative determinations, subject to judicial review, under the Administrative Procedure Act, in this case, the subject-matter involves his alleged abuse of his own powers and the exercise of powers in excess of those granted him, and as a principle of Due Process of Law under the above-cited provisions of the Constitutions of the United States and the State of Tennessee, he may not properly sit in judgment on his own past actions and conduct in office under the said Act.

ANSWER and DEMAND FOR HEARING

For answer to the specific allegations of the numbered parts and paragraphs of the Notice of Charges, Respondents make the following responses:

I. AUTHORITY

DENIED as to jurisdictional allegations, except that it is Admitted that Respondent Company is a Trust Company subject to the provisions of Title 45, Chapters 1 and 2, T.C.A., and DENIED that Respondent Company has violated any provisions thereof, except that it is ADMITTED that the Commissioner is empowered to execute all laws related to such trust companies (but not to execute against *trust companies* statutes therein applicable only to *banks* or other persons or entities not acting as trust companies), and the power of execution of such laws granted to him by law is to seek appropriate writs for equitable relief from the Davidson County Chancery Court, in the exercise of its judicial powers, under T.C.A. § 45-1-107(a)(6). It is DENIED that the Commissioner himself is empowered, or constitutionally can be empowered, to himself exercise such judicial powers.

II. FACTUAL ALLEGATIONS

1. ADMITTED.
2. ADMITTED that the Acts of 1999 made companies doing a trust business

in Tennessee subject to all provisions of the Tennessee Banking Act (being Chapters 1 and 2 of Title 45, TCA) applicable to trust companies which are not banks, otherwise DENIED.

3. ADMITTED.

4. ADMITTED, and Respondent Company cooperated therein, but does not admit that the Commissioner's examining authority applicable to banks holding deposits, as defined by T.C.A. § 45-1-103, is equally applicable to trust companies without banking powers that are subject to the provisions of the Tennessee Banking Act.

5. ADMITTED that the Board of Sentinel met with the Commissioner on October 6, 2003 in his Nashville office at his request, to discuss the urgency of completing the 2002 audit then underway by Kraft CPAs, Columbia, Tennessee.

6. ADMITTED that on August 25, 2003, it paid Kraft CPAs an initial retainer of \$5,000 to perform the 2002 audit, and further alleges that the Department's trust examiner was on premises continually from June, 2003 through October, 2003 and was privy to the status of Sentinel's engagement of a new audit firm, further alleges that the Commissioner was advised from time to time personally by Respondent Company's counsel, Waller Lansden Dortch & Davis and Farmer & Luna, both of Nashville, from July, 2003 onward, of the ongoing process of the appointment of Kraft CPAs prior to August 25, 2003. Respondents deny all remaining allegations for lack of adequate information to either admit or deny.

7. DENIED for lack of adequate information to either admit or deny.

8. DENIED for lack of adequate information to either admit or deny.

9. DENIED, such audit report having been completed on or about March 18, 2004 covering the period through December 31, 2002, and that the report was delivered to the Commissioner by next day.

10. DENIED as a conclusory allegation, inasmuch as such report speaks for itself, but it is DENIED that Kraft had the necessary knowledge or expertise to opine upon Defendant Company's authority, under the applicable trust instruments, to utilize trust funds to pay the expenses of its required performance of its fiduciary allegations.

11. DENIED as a conclusory allegation, inasmuch as the opinion speaks for itself, but Respondent Company alleges, on information and belief, that Kraft has now completed field work for the 2003 audit.

12. DENIED for lack of knowledge as to the Department's understanding. However, Respondent Company has been advised legally and by other knowledgeable professional sources that it is required under general accounting principles to maintain its corporate books separate and apart from its fiduciary records and accounts, that it is neither permitted nor required to consolidate its fiduciary accounts and their assets on its corporate records and, further, that it is neither permitted nor required to record commitments undertaken for fiduciary accounts on its corporate books and records. Respondent Company further alleges that each fiduciary account is individually responsible for related commitments undertaken by Sentinel in its fiduciary capacity from the monies, actions or other property subject to lien of the governing instrument of each such fiduciary account. It further alleges upon information and belief that the attorneys for plaintiff in the lawsuit charging Respondent Company with breach of its fiduciary duties have requested permission of the Court to withdraw from the action.

13. DENIED as a conclusory allegation, inasmuch as the said letter speaks for itself.

14. DENIED for lack of knowledge as to Respondent Company's former attorneys' alleged actions and statements, but Respondent Company alleges that such attorneys were not employed or authorized to make such representations, or any

concessions, on its behalf, and any such statements were of their own views or opinions, and further, that all communications of knowledge between said Respondent and its former counsel were within the attorney-client privilege.

15. DENIED for lack of knowledge, but Respondent Company further alleges that its said former counsel were neither qualified nor competent to express opinions on accounting matters, that Waller Lansden Dortch & Davis resigned as Sentinel's Counsel on or about May 8, 2004, after having collected fees and expenses from Sentinel and its fiduciary accounts amounting to more than \$4 million since 1999, most of which had been approved for payment by Paul Williams, Executive Vice President, whose primary responsibility was the direct oversight and approval of deposits for and payments from corporate trust accounts in the day to day administration of those accounts.

16. DENIED for lack of knowledge, and Respondent Company further denies that its said former Counsel had authority or capacity to express accounting opinions, except to the extent of factual knowledge relating to its receipt of payments from Respondent Company in their representation if it in its corporate or fiduciary capacities.

17. Respondent Company Sentinel admits that its Board met with the Commissioner and others on April 30, that its President Bates answered that the sum of cash overdrafts in defaulted trust accounts and prior overdrafts then being carried as a receivable on the Trust Department books and records was an estimated approximately \$7.25 million. Said Respondent further alleges that the fees and expenses cumulatively paid to its Counsel equalled more than half of the overdrafts and receivables incurred in its performance of its duties to the bondholders of defaulted bonds; that its method of accounting and funding fees and expenses for defaulted trust accounts had not changed from the time the Department first began its examinations in 1999 and that until the present time the Department had not instructed or advised Sentinel that its policies and procedures were not acceptable. Said Respondent further alleges that the Department knew or should

have known about these matters since Sentinel obeyed the Department's requirements that it file monthly reports with the Department from November, 2000 to July, 2001, and that it thereafter filed quarterly reports continuing through and up to April 30, 2004.

III. CHARGES

Respondents deny the introductory paragraph's stated conclusions, and deny that Respondent Company has engaged in or is required to engage in any "banking practices" inasmuch as it is not a bank, is not required to operate in the manner of a bank, but is required to operate and does operate legally in compliance with all laws and regulations applicable to trust companies not authorized to engage in the banking business. Said Respondent makes the following responses to the numbered paragraphs of the said Charges:

1-4. DENIED. To the contrary, Respondent Company alleges that it has at all times attempted to conduct its business and discharge its fiduciary obligations in a manner consistent with all laws and regulations, State and Federal, applicable to trust companies acting as trustee over bond issues publicly issued and held by bondholders throughout the United States; that its management of such assets and discharge of such obligations were reasonably believed by it have been lawful, in the best interest of bondholders, and in the exercise of powers granted to it and the performance of duties imposed upon it by the bond resolutions or indentures governing the hundreds of bond issues as to which it has acted as trustee and paying agent.

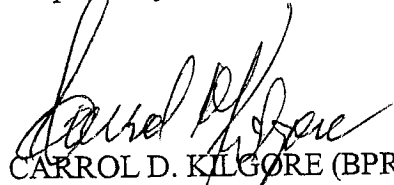
5. Respondent Company further alleges that the actions taken by the Commissioner in and pursuant and subsequent to the issuance of such Notice of Charges has obstructed and prevented it from performing such fiduciary obligations, have had the apparent effect of terminating the authority of its attorneys to continue pursuing legal remedies to recover assets for the benefit of bond holders entitled thereto, threaten its

corporate existence, has directly caused the default on bond issues that otherwise would not have been in default, but that it is within the professional capacity of said Company to recover from such damages inflicted upon it and the bond-issuing entities and bond holders for whose protection it acts, if the Commissioner will promptly dismiss all charges and terminate all proceedings, subject to Respondent Company's obligation to obey all laws applicable to trust companies, which are not engaged in the banking business, when acting as fiduciaries under trust instruments related to bonded indebtednesses.

WHEREFORE, Repondents pray that the Commissioner terminate all proceedings against Sentinel Trust Company, its officers and directors, and permit them resume operation of the said company, management of the funds it holds in trust, and performance of its fiduciary obligations to the many bondholders whose assets are not being competently protected under the "receivership" the Commissioner has imposed, and particularly, that it should immediately be permitted to authorize its attorneys to continue collection activities in pending litigations for the benefit of bondholders.

FURTHER, Respondents demand that they be accorded every hearing and other procedural safeguard to which they are entitled, at the same time insisting that the Commissioner's actions in the premises, claimed to be authorized by T.C.A. § 45-1-107, in fact are not authorized thereby, and are therefore not subject to the Administrative Procedure Act, but are beyond the Commissioner's authority.

Respectfully submitted,



CARROL D. KILGORE (BPR 2544)
BRANSTETTER, KILGORE, STRANCH & JENNINGS
227 Second Avenue North, Fourth Floor
Nashville, TN 37201-1631
Tel. (615) 254-8801
Fax: (615) 255-5419